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09C-776

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. L. R. Houston

DATE: 15 February 1950

FROM : JK

SUBJECT: Preliminary Comments on Memorandum from Finance Division and Budget Officer in Connection with Reduced Rate Round-Trip Tickets Between the United States and Foreign Countries.

1. Paragraph 16 of the Standardized Government Travel Regulations requires an officer or employee, in the absence of an official justification, to secure a round-trip ticket wherever practicable and economical. Because of this, it has been held on numerous occasions that, regardless of the mode of travel used, an employee traveling on official business may be allowed only the cost of a round-trip ticket via the mode of transportation used in the "going" trip. It has also been stated that where there is a specific authorization or approval, by proper authority, of the transportation actually used, it may be assumed that the requirement of "official reason" has been satisfied.

2. As the Comptroller has stated, any number of sets of circumstances may arise making it impracticable or uneconomical to comply with Paragraph 16 of the Standardized Government Travel Regulations. In such cases, a statement of the facts establishing the official reason for nonuse of a round-trip ticket is ordinarily submitted, or, in the absence of a round-trip ticket a justification as to the purchase of one-way tickets for each step of the journey.

3. It is my opinion, and also that of the Budget Officer, that the present rulings afford no basis for concluding that, as a general rule, the requirements with respect to the procurement of reduced rate round-trip tickets should not be applied to travel outside the United States in the same manner as to travel within the continental limits of the United States. Although a policy of inducement to travel by air would achieve obvious economies in travel, there would appear to be no satisfactory basis for suggesting this to the employees in view of their recognized right to select alternate modes of travel without regard to the comparative costs thereof.

4. Paragraph 3 of the memorandum from Finance Division to the Budget Officer and General Counsel accurately states the prevailing rule.

5. Paragraph 4 of the same memorandum suggests an anomaly, to wit, a traveler at an overseas post commencing the initial part of his round-trip by air is required to return by air unless he wishes to assume the excess cost occasioned by a return trip by sea transportation.

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This is compared with the converse proposition which results in no excess costs being charged to the employee. Although this may appear to be an anomaly, it is my opinion that the excess cost is not in the nature of a penalty. When an officer or employee performs travel on behalf of the Government, whether it be TDY, PCS or home leave, the understanding is that the travel is performed on the terms and conditions required by Government law and regulations, and the decisions necessarily flowing therefrom. The Government has acted in an employer capacity by granting the employee the right to elect alternate modes of travel in proceeding to his destination. It follows that the officer or employee once having selected a specified mode of travel should be bound thereby. The Government obviously is not required to object if the alternate mode of travel selected by the officer or employee for the return trip results in a lower cost, but it does not follow that the officer or employee is competent, having once made his selection, to qualify the election at a subsequent time or place by electing a more expensive alternate mode of travel. The advantage lies with the Government, the employer, and not with the officer or the employee.

6. Paragraphs 5 a. and b. of the memorandum from Finance Division to the Budget Officer, refer to unnecessarily lengthy periods of travel. So long as the right of election rests with the officer or employee, and so long as this right is recognized in the decisions, the probability of inducing employees to travel otherwise appears to be extremely speculative. As indicated above, it is my opinion, with reference to paragraph 5 c. of the same memorandum, that the excess charge is not in the nature of an inequitable penalty, but flows necessarily from the employer-employee relationship.

7. With respect to the questions raised in the aforesaid memorandum by paragraphs 6a., b., c., and d. thereof, the following comments appear appropriate. For purposes of convenience, my comments are keyed to the corresponding subparagraphs of the memorandum concerned.

a. It is my impression that trans-ocean air travel has been accepted as a recognized Government concept of a "usually traveled route." *

b. The second question of paragraph 6a. of said memorandum would appear to turn on the facts and circumstances surrounding each leg of the journey involved. For example: if an officer or employee traveling from one foreign area to another discovers that further travel by air can be accomplished only by reliance on uncharted airline, etc., he then, in his discretion, would be entitled to elect an alternate mode of travel without question.

* (These rulings are not found in the published decisions. They appear in independent rulings to certifying officer, and generally hold that air transportation is an accepted and reliable mode of transportation).

On the basis of the prevailing decisions, it appears that the question raised in paragraph 6 b. must be answered in the affirmative.

c. With respect to paragraph 6 c., the Comptroller has indicated the difficulty in measuring the value of the services of the employee in arriving at his station at an earlier date. Mere early arrival has been held insufficient to justify a more expensive mode of transportation. (18 Comp. Gen. 973). In this connection also see 10 Comp. Gen. 408.

d. Paragraph 6 d. of the memorandum would involve applying the principle of an "official reason" in connection with the transportation involved. Hence, this appeared to be covered under existing regulations and interpretations.

8. Paragraph 7 of the same memorandum raises the interesting question as to whether an employee who voluntarily flies across the ocean in September may elect to return by other than air at a time when, in his opinion, flying conditions are presumably more hazardous. This conclusion would of necessity be required to be grounded on some principle other than remote contingency, and unless there was some clear indication of danger, I feel that this question would likewise have to be resolved in the affirmative. Statistics demonstrate that travel by rail is safer than travel by air, but it does not follow that an individual, having initiated his trip by air, is entitled to return by rail, in view of the recognized difference in safety.

9. Paragraph 8 of the memorandum is believed to be covered by the prevailing decisions. If it is the intention to argue a case of "urgency" it is more logical to base it on the "return trip" rather than the "coming trip" for, as in the case of home leave, there frequently follows a period of TDY, reorientation, training, etc. It is apparent that a case of urgency is not as perceivable on the "coming trip" as it would be on the "going trip."

10. The implications of paragraph 3 of memorandum of 9 February 1950, from the Budget Officer to the General Counsel, commenting on the memorandum from the Acting Chief, Finance Division to the Budget Officer and General Counsel, are not clear.

11. The foregoing represents a review of prevailing decisions on the subject of round-trip ticket requirements. Under present policy and practices the Finance Division is complying with the accepted Government method.

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The suggestion that explorations be conducted for the purpose of reviewing Agency procedures, or to discover possible loop-holes, appears to raise a question with which this office has previously been confronted. If the Director, as a matter of policy, wishes to alter the prevailing rule, then future opinions by this office would necessarily be governed thereby. However, in the meantime, we can only state that the principles, as indicated above, are generally applicable to the Government.

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